

REMARKS

Claims 1 to 15 and 17 to 20 are pending in the present application.

In view of the following, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

Claims 1 and 13 were rejected under 35 U.S.C. § 112, second paragraph, as indefinite. Specifically, claim 1 was rejected for its use of the term “the other of the user side” and claim 13 was rejected for its use of the term “the other of the provider side,” which were asserted to lack antecedent basis. Accordingly, claims 1 and 13, as presented, obviate the antecedent basis issue.

Accordingly, claims 1 and 13 are allowable.

Claims 1 to 15 and 17 to 20 were rejected under 35 U.S.C. § 103(a) as unpatentable over Brunemann et al., U.S. Patent No. 6,487,717, in view of Suman et al., U.S. Patent No. 5,717,387. While the rejections may not be agreed with, to facilitate matters, independent claims 1, 2, and 13 now provide that “the operating state cannot be changed during the reprogramming.”

In rejecting a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. In re Merck & Co., Inc., 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claim 1, as presented, is to a “method for transmitting data between a respective data processing unit on a provider side and a respective data processing unit on a user side, the respective data processing unit on the provider side and the respective data processing unit on the user side in each case being operatively connected to a respective transmitting/receiving device for at least one of wireless transmission and wireless reception of data,” including the feature of “storing, in a buffer storage, data received from the

respective transmitting/receiving device of one of the user side and the provider side,” and the feature of “loading the stored data into the respective processing unit on another of the user side and the provider side only during an existence of a predefined operating state on the user side or the provider side,” where “the user side is on a motor vehicle,” “*reprogramming using the stored data occurs when the motor vehicle is not moving*,” and “*the operating state cannot be changed during reprogramming*.”

The Brunemann and Suman references do not disclose or even suggest the feature of *reprogramming using the stored data occurs when the motor vehicle is not moving*. The Office Action relies on Suman as to this feature. However, while the Suman reference may discuss checking whether an ignition is on, nothing in the Suman reference discloses or suggests the feature of *reprogramming* using the stored data occurs when the motor vehicle is not moving. In addition, nothing in the Brunemann and Suman references discloses or suggests that *the operating state cannot be changed during reprogramming*, as provided for in the context of the claim.

Accordingly, claim 1 is allowable.

Claim 2 is to a “method for transmitting data between a respective data processing unit on a provider side and a respective data processing unit on a user side, the respective data processing unit on the provider side and the respective data processing unit on the user side in each case being operatively connected to a respective transmitting/receiving device for at least one of wireless transmission and wireless reception of data,” including the feature of “storing, in a buffer storage, data received from the respective transmitting/receiving device of the provider side,” and the feature of “loading the stored data into the respective processing unit on the user side only during an existence of a predefined operating state on the user side,” where “the user side is on a motor vehicle,” and “reprogramming using the stored data occurs when the motor vehicle is not moving,” and “*the operating state cannot be changed during the reprogramming*.”

As explained above, the Brunemann and Suman references do not disclose or even suggest the feature of reprogramming using the stored data occurs when the motor vehicle is not moving. Also as explained above, the reference do not disclose or suggest that the operating state cannot be changed during the reprogramming.

Accordingly, claim 2, as presented, is allowable, as are its dependent claims 3 to 12.

Claim 13 is to a “system for transmitting data between a respective data processing unit on a provider side and a respective data processing unit on a user side,” including the feature of “a buffer storage configured to buffer data received from one of the provider side and user side, the buffered data being transmitted to the respective data processing unit on another of the provider side and user side only during an existence of a predefined operating state on the provider side or the user side,” where “the programmable control unit is loaded with the received data only when the motor vehicle is not moving,” “reprogramming using the stored data occurs when the motor vehicle is not moving,” and *“the operating state cannot be changed during the reprogramming.”*

As explained above, the Brunemann and Suman references do not disclose or even suggest the feature of reprogramming using the stored data occurs when the motor vehicle is not moving. The references also do not disclose or suggest providing the feature in which the operating state cannot be changed during the reprogramming.

Accordingly, claim 13, as presented, is allowable, as are its dependent claims 14, 15, and 17 to 20.

Claims 8 and 17 were rejected under 35 U.S.C. § 103(a) as unpatentable over Brunemann et al., U.S. Patent No. 6,487,717, in view of Suman et al., U.S. Patent No. 5,717,387, and in further view of Levy, U.S. Patent No. 6,493,676.

Claim 8 depends from claim 2, and claim 17 depends from claim 13. As explained above, the Brunemann and Suman references do not disclose or suggest all of the features of claims 2 and 13. Since it is not suggested that the Levy reference cures the critical deficiencies of the Brunemann and Suman references, the proposed combination of the Brunemann, Suman, and Levy references cannot disclose or even suggest all of the features of claims 2 and 13, as presented, or their dependent claims 8 and 17.

Accordingly, claims 8 and 17 are allowable for the same reasons as their respective base claims 2 and 13.

In sum, claims 1 to 15 and 17 to 20 are allowable.

CONCLUSION

In view of the foregoing, it is respectfully submitted that all of the presently pending claims are allowable. It is therefore respectfully requested that the objections and rejections be withdrawn. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is respectfully requested.

Respectfully submitted,

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